

§ 722.139 Lump sum awards; settlement.

No State workmen's compensation law shall be excluded from the Secretary's list solely on the grounds that such law permits lump sum awards, or commutation or settlement of claims or awards: *Provided*, That (a) such lump sum award or commutation or settlement is approved by an appropriate State agency; (b) such lump sum award, commutation, or settlement is equal to the present value of future benefits payments commuted, computed at no less than 4 percent true discount compounded annually; (c) accepted and reliable tables of probabilities are used for the purpose of computing the present value of future benefits payments commuted and (d) no lump sum award, commutation, or settlement, shall be construed to deprive a miner of his right to future medical benefits or services under such State law.

§ 722.140 Protection of benefits.

No State workmen's compensation law shall be included on the Secretary's list unless such State law contains a provision or provisions:

(a) Which declare invalid any assignment or release of benefits or future benefits payable;

(b) Which exempt all current and future benefits from all claims of creditors, and from levy, execution, attachment, garnishment, or any other remedy for recovery or collection of a debt, which exemption may not be waived; and

(c) Which insure that any person entitled to benefits for total disability or death due to pneumoconiosis shall have a lien against the assets of the responsible insurance carrier or coal mine operator for such benefits without limit of amount, and shall, upon insolvency, bankruptcy, or reorganization in bankruptcy proceedings of the insurer or operator, or both, be entitled to preference and priority in the distribution of the assets of such insurer or operator, or both. This paragraph shall not be construed to require the creation of a statutory lien against the assets of any State fund.

§ 722.141 Payment periods.

No State workmen's compensation law shall be included on the Secretary's list unless such law provides that compensation payable on account of total disability or death due to pneumoconiosis shall be paid not less frequently than once each month.

§ 722.142 Prompt payment of benefits.

No State workmen's compensation law shall be included on the Secretary's list unless such law provides some means such as judicial enforcement whereby an eligible claimant shall have effective recourse to insure that benefits due such claimant are paid fully and promptly.

§ 722.143 Medical benefits.

(a) Section 422(a) of the Act by incorporating section 7(a) of the Longshoremen's Act (33 U.S.C. 907(a)) requires that medical services and supplies be furnished to a miner totally disabled by pneumoconiosis. No State law shall be included on the Secretary's list unless such State law guarantees that every miner who is totally disabled due to pneumoconiosis shall be furnished, at no cost to the miner, with such medical, surgical, and other attendance or treatment, nurse and hospital service, medicine, crutches, and apparatus, for such period as the nature of the disability may require.

(b) No State law shall be included on the Secretary's list if such law places arbitrary time or dollar limitations on a totally disabled miner's entitlement to the medical benefits described in this section.

§ 722.144 Medical examinations, reexaminations.

No State workmen's compensation law shall be included on the Secretary's list unless such State law provides that medical examinations or reexaminations conducted in respect of a claim at the request or order of an insurance carrier, coal mine operator, employer, or State agency shall be conducted at the expense of the insurance carrier, coal mine operator, employer, or State agency as the case may be. In no event shall the cost of such examination or re-examination be chargeable to the claimant.

§ 722.145 Vocational rehabilitation.

(a) Section 422(a) of the Act, by incorporating section 39 of the Longshoremen's and Harbor Workers' Compensation Act requires the Secretary to arrange for and direct the vocational rehabilitation of miners totally disabled for work in or around a coal mine. No State workmen's compensation law shall be included on the Secretary's list unless such State law makes available to miners totally disabled for such work such vocational rehabilitation facilities as are provided by the State under its workmen's compensation programs to disabled employees in general.

(b) No State workmen's compensation law shall be included on the Secretary's list if the use of vocational rehabilitation facilities in such State would result in a partial or total loss of benefits to such miner.

ACTION BY THE SECRETARY

§ 722.146 Standards for review of a State workmen's compensation law.

(a) The standards for determining whether a State workmen's compensation law provides adequate coverage for total disability or death due to pneumoconiosis as set forth in this part are mandatory, in that compliance therewith is prerequisite to inclusion of any such law on the Secretary's list. Such standards have been determined to be the minimum requirements that a State workmen's compensation law must meet in order that the intent of section 421 of the Act be carried out. After review of the information submitted by a State pursuant to § 722.104 and any other information made available to the Department of Labor, the Secretary shall determine whether a State workmen's compensation law meets all of such requirements.

(b) Notwithstanding any other provision of this part, if it is shown, despite the language contained in a State workmen's compensation law, that because of judicial or administrative decision, or duly promulgated rules and regulations, or common practice in the State, such law does not provide adequate coverage for total disability or death due to pneumoconiosis, such law

shall be excluded from the Secretary's list.

(c) Notwithstanding any other provision of this part, if it is found that any provision contained in a State's workmen's compensation laws or general laws serves or would be likely to serve to diminish the coverage available in such State for total disability or death due to pneumoconiosis, such State's workmen's compensation law may be excluded from the Secretary's list.

§ 722.147 Action subsequent to review.

(a) If it is found that a State workmen's compensation law during any period provides adequate coverage for total disability or death due to pneumoconiosis, such law shall be included for such period on the Secretary's list to be published in the FEDERAL REGISTER and set forth in § 722.152 pursuant to section 421(b)(1) of the Act. The appropriate State agency shall be notified of the Secretary's action.

(b) If it is found that a State workmen's compensation law submitted for consideration pursuant to § 722.103 does not provide adequate coverage for total disability or death due to pneumoconiosis during any period, the appropriate State agency shall be notified of such decision and, if such law has previously been on the Secretary's list, of the fact that the decision requires deletion of such law from the list during such period. Such notice shall contain a brief statement of reasons enumerating the provision or provisions of the State's law which are unacceptable.

(c) In the event of a denial of a request that a State workmen's compensation law be included on the Secretary's list, or of a decision to delete a previously listed law from the list, the appropriate State agency shall have the right to request the Secretary to reconsider his action. Such request shall be accompanied by a brief or memorandum in support thereof.

§ 722.148 Provisional approval.

The Secretary may, in his discretion, provisionally approve a State's request that its workmen's compensation law be included on the Secretary's list pending the final promulgation of rules and regulations or the effective date of